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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,351	03/27/2002	Dana Paul Gruenbacher	8278	1392

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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 03/08/2004

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,351

Applicant(s)

GRUENBACHER ET AL.

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003 and 24 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9 and 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

1. The request filed on October 24, 2003 (Paper No. 14) for a Request for Continued Examination (RCE) under 37 CFR 1.114 (a)(3) based on parent Application No. 10/089,351 is acceptable and an RCE has been established. An action on the RCE follows.

Drawings

2. The drawings are objected to under 37 CFR 1.84(h)(3) because Figures 2 and 11, both cross sectional views, fail to show the required hatching. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities: (A) on page 3, in the paragraph beginning on line 11, "a first side having a first internal surface and a first external surface" has been described; however, the description beginning on line 14 of page 7 fails to describe what structure constitutes such a first side having a first internal surface and a first external surface; and (B) on page 3, in the paragraph beginning on line 11, "a second side having a second internal surface and a second external surface" has been described; however, the description beginning on line 14 of page 7 fails to describe what structure constitutes such a second side having a second internal surface and a second external surface. Appropriate correction is required.

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4. The following informalities in the specification are noted: (A) on page 40, line 10, "acheating" should read --a heating--; and (B) on page 60, line 17, "53" should read --57--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1, 2, 4-9 and 11-20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for an internal cavity that is accessible "through an opening" (note line 25 on page 8), does not reasonably provide enablement for "at least one . . . opening", as called for by claims 1, 13 and 17, which purports more than one opening. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

7. Claims 1, 2, 4-9 and 11-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 13 and 17 now call for "an activatable temperature changing element". However, the original disclosure fails to describe or support such a temperature changing element. Hence claims 1, 13 and 17 are directed to new matter.

8. Claims 1, 2, 4-9 and 11-20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a mitt to include "a heating and/or cooling element" (note lines 28-29 on page 33), does not reasonably provide enablement for "a temperature changing element", i.e., an element capable of changing its temperature, for a mitt as called for by claims 1, 13 and 17. The specification does not enable any person skilled in the art to which it pertains,

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or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

9. Claims 3 and 4 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The disclosure fails to support that the embodiment which utilizes the "temperature changing element" can be used for "cleaning, moisturizing, conditioning, or otherwise treating the skin, hair, or nails", as called for by claim 3. The disclosure also fails to support that the embodiment which utilizes the "temperature changing element" can be used with a "product selected from the group consisting of face cleansers, body cleansers, toners, lotions, moisturizers, ointments, cosmetics/make-ups, medicaments, and related topically applied treatments", as called for by claim 4.

10. Claims 4 and 5 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 4 now calls for the product to be selected from the group consisting of face cleansers, body cleansers, toners, lotions, moisturizers, ointments, cosmetics/make-ups, medicaments, related topically applied treatments, "and combinations thereof". However, the original disclosure fails to describe or support that combinations of face cleansers, body cleansers, toners, lotions, moisturizers, ointments, cosmetics/make-ups, medicaments, related topically applied treatments can be used. Hence claim 4 is directed to new matter.

11. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a massaging structure of "rotating or rolling balls/cylinders/rods" (note line 3 on page 53), does not reasonably provide enablement for "balls, cylinders, rods" as called for by claim 12. The specification does not enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with this claim.

12. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a massaging structure of "three-dimensional patterns embossed, engraved, or otherwise formed in a solid material" (note lines 3-4 on page 53), does not reasonably provide enablement for three-dimensional patterns "embossed within" a solid material, three-dimensional patterns "engraved within" a solid material, and three-dimensional patterns "formed within" a solid material as called for by claim 12. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with this claim.

13. Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 14 calls for the temperature changing element to be located "on said first external surface". However, the original disclosure fails to describe or support such a location for the temperature changing element. Hence claim 14 is directed to new matter.

14. Claims 17-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 17 calls for an activatable "self-enclosed" temperature changing element "disposed within said product" for heating the product. However, the original disclosure fails to describe or support such a self-enclosed temperature changing element or that the temperature changing element is disposed within the product. Hence claim 17 is directed to new matter.

Claim Rejections - 35 USC § 103

15. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

16. Claims 1, 2, 4-7, 9, 13, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sansonetti in view of Cahill. Sansonetti discloses a semi-enclosed applicator in the form of a mitten or glove for distributing a product having a first temperature onto a target surface having the claimed features including a first side having a first internal surface and a first external surface (constituted by the upper hand portion of the mitt 10), a second side having a second internal surface and a second external surface (constituted by the bottom hand portion of the mitt 10) wherein the first internal surface and the second internal surface form an internal cavity (constituted by chamber 16) therebetween, the internal cavity 16 having an opening that is externally accessible (note Fig. 1), a rupturable reservoir 18 containing the product 20 located proximate to the first internal surface (note Fig. 3), and an activatable temperature changing element (constituted by heating element 34) located proximate to the reservoir 18 (note Fig. 3) wherein the temperature changing element 34 changes the first temperature of the product upon activation and prior to the product being released from the reservoir 18 to the target surface through the first side. Sansonetti discloses that the product is released from the reservoir upon melting of the membrane 22 which seals the product within the reservoir (note lines 27-30 in col. 2). Although Sansonetti fails to disclose that the product 20 is released from the reservoir 18 in response to an application of pressure to the rupturable reservoir, attention is directed to Cahill who discloses another mitten or glove for use in the application of a hand cream having at least one product containing reservoir 3 sealed by a membrane 5 which ruptures when pressure is applied for that purpose (note lines 41-45 in col. 1) to effect a desired application of the hand-treatment vehicle or product to affected parts of the hand (note lines 2-5 in col. 2). It would have been obvious to one of ordinary skill in the hand care glove/mitten art, at the time the invention was made, to seal the reservoir of Sansonetti with a membrane that ruptures in response to

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pressure being applied thereto in view of the teachings of Cahill in order to better control the application of hand cream to specific affected parts of the hand. With respect to claim 2, Sansonetti also discloses that the temperature changing element 34 is located between the first and second internal surfaces of the mitten (note Figs. 2 and 3). With respect to claim 4, Sansonetti further discloses that the applicator moisturizes and conditions skin to facilitate absorption of the hand cream (note lines 39-42 in col. 1). With regard to claim 5, Sansonetti additionally discloses that the product 20 is a hand cream, which creams are well known to contain such ingredients as emollients, oils and polymers. With respect to claim 6, the product 20 hand cream of Sansonetti inherently has shear-thinning or thixotropic properties since the heat aids in the absorption of the cream (note lines 39-42 in col. 1). With respect to claim 7, the product 20 hand cream of Sansonetti inherently has tactile properties such as greasiness or slipperiness. With respect to claim 9, Sansonetti additionally discloses that the first and second sides each comprise a functional side (note lines 6-8 in col. 1). With regard to claim 15, Sansonetti also discloses that the rupturable reservoir is provided with a frangible seal constituted by the membrane 22 having a resistance to bursting. With regard to claim 16, Sansonetti further discloses a barrier layer constituted by inner mitten 12 which is substantially impervious to the product and is disposed proximate to the first internal surface (note lines 23-27 in col. 2).

17. Claim 8 is rejected under 35 U.S.C. 103 as being unpatentable over Sansonetti in view of Cahill as applied to claims 1, 2, 4-7, 9, 10, 13, 15 and 16 above. Although Sansonetti fails to disclose the chemical composition of the product 20 hand cream, using such ingredients as petrolatum, petroleum jelly, castor oil, octocrylene, tocopheryl acetate or non-volatile organo-substituted polysiloxanes in the hand cream formula would be an obvious matter of choice to the artisan skilled in the hand cream art depending upon the brand of hand cream used since such ingredients are well known constituents of hand cream formulas.

18. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sansonetti in view of Cahill as applied to claims 1, 2, 4-7, 9, 10, 13, 15 and 16 above and further

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in view of Charos. Although Sansonetti fails to disclose that the applicator contains a massaging structure positioned behind the first external side, attention is directed to Charos who discloses another heated hand cream mitt or glove having cavities 2 or 10 on the inner side of the external side (note Figs. 1-3) in order to effect a suction-massage action (note lines 20-24 in col. 2). It would have been obvious to one of ordinary skill in the heated hand cream mitt or glove art, at the time the invention was made, to provide the inner side of the mitt of Sansonetti with cavities in view of the teachings of Charos in order to effect a suction-massage action.

Response to Arguments

19. Applicants' arguments filed September 29, 2003 (Paper No. 12) have been fully considered but they are not deemed persuasive.

20. Applicants' arguments regarding the objection to the specification that the description beginning on line 14 of page 7 fails to describe what structure constitutes such a first side having a first internal surface and a first external surface have been carefully considered. However, the description on page 8, line 27, to page 9, line 3, which applicants point out as the support for such terminology, fails to use the terminology of "first side", "first internal surface" and "first external surface" but rather refers to "front outer surface", "front inner surface", "back outer surface", "back inner surface" and "front and back panels". Hence, it is ambiguous as to what constitutes the former as well as "a second side having a second internal surface and a second external surface".

21. Contrary to applicants' assertions, no amendments to the specification on page 7, line 7, and page 60, line 17, have been made.

22. Applicants' assertion that they are at a loss regarding the informality on page 40, line 10, is not understood. Said line 10 begins a new paragraph and reads "In another embodiment, Figures 44 and 45, of a heating element may include use". Applicants may overcome this by

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amending this particular line as --In another embodiment, Figures 44 and 45, of a heating element may include use--.

23. Applicants' arguments regarding the rejection of claims 1, 2, 4-9 and 11-20 relating to at least one "opening" has been carefully considered. However, "at least one externally accessible internal cavity for receiving a portion of a human anatomy", which is the language pointed out by applicants, does not even mention an "opening".

24. Applicants' arguments regarding the rejection of claims 1, 2, 4-9 and 11-20 relating to "an activatable temperature changing element" have been carefully considered. However, the specification beginning on page 33, line 27, to page 43, line 9, as pointed out by applicants, only refers to a "heating and/or cooling element" (on pages 33-37) or "a temperature-changing element" (on page 38 with regard to Figs. 34-39) or "activating the heating/cooling element" (on page 42) rather than "an activatable temperature changing element".

25. Applicants' arguments regarding the rejection of claims 1, 2, 4-9 and 11-20 relating to a mitt which includes a temperature changing element have been carefully considered. However, the term "temperature changing element" is only found on page 38 in describing Figures 34-39. These figures clearly do not show such an element made into a mitt.

26. Applicants' arguments regarding the rejection of claim 4 relating to a temperature changing element and its uses have been carefully considered. However, applicants' "Example 1" beginning on page 45 merely describes "a glass cleaning mitt" and "Example 2" beginning on page 47 merely describes "a personal care mitt" for "beautifying, cleaning, moisturizing, conditioning, or otherwise treating the skin, hair, or nails" and for "applying a heated moisturizer to the face".

27. Applicants' arguments regarding the rejection of claims 4 and 5 relating to the combinations claimed have been carefully considered. However, the specification at page 49, lines 12-14, as pointed out by applicants, merely supports "products" that are "comprised of a single or plurality of ingredient components, and may include a topically active component or

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combination of active components” rather than combinations of face cleansers, body cleansers, toners, lotions, moisturizers, ointments, cosmetics/make-ups, medicaments, and related topically applied treatments”, as called for by claim 4.

28. Applicants’ arguments regarding the rejection of claim 12 relating to the massaging structure of balls, cylinders, rods have been carefully considered. However, the originally filed disclosure only provides support for “rotating or rolling balls/cylinders/rods”.

29. Applicants’ arguments regarding the rejection of claim 14 relating to the temperature changing element to be located on the first external surface have been carefully considered. However, the specification from page 41, line 31, to page 42, line 2, as pointed out by applicants, does not even mention that the location of the temperature changing element is “on said first external surface”, as called for by claim 14.

30. Applicants’ arguments regarding the rejection of claim 17 relating to an activatable self-enclosed temperature changing element which is disposed within the product for heating the product have been carefully considered. However, the specification from page 42, line 31, to page 43, line 3, as pointed out by applicants, does not even mention “an activatable self-enclosed temperature changing element” being “disposed within said product”, as called for by claim 17.

31. Applicants’ arguments regarding the art rejection of the claims under 35 U.S.C. 103(a) have been carefully considered. However, the Sansonetti reference clearly shows and discloses as pointed out in the above rejection of the claims, that the reservoir is located proximate to the first internal surface. Similarly, the Sansonetti reference clearly shows and discloses, as pointed out in the above rejection of the claims, that the temperature changing element changes the first temperature of the product upon activation and prior to the product being released from the reservoir to the target surface through the first side, with the innermost surface of the first internal surface of the first side being constituted by membrane 22, which seals and covers the reservoir 18, as clearly shown in Figure 3. Sansonetti clearly discloses that the hand cream is

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released upon the melting of the membrane and it is considered that the hand cream is released through the membrane as it melts.

32. Applicants' additional arguments regarding the Sansonetti reference have been carefully considered. However, the claims are silent as to what constitutes a target surface. In Sansonetti, the target surface is constituted by a person's hand since that is where the hand cream is targeted to go. Such a person's hand constitutes an external surface to the mitt.

33. In response to applicants' arguments that the Sansonetti reference fails to show certain features of applicants' invention, it is noted that the features upon which applicants rely (i.e., an external surface) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

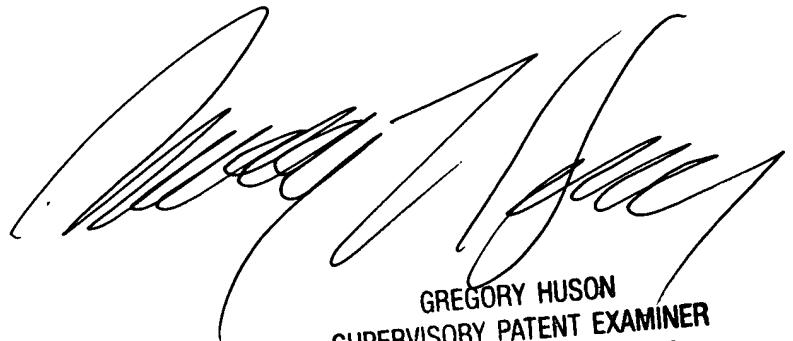
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Kathleen J. Prunner

March 5, 2004



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